* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **I.T.A. No.537/2007**

% Date of Decision: 22.03.2011

Commissioner of Income Tax, Delhi – V .... Appellant
Through: Ms. Rashmi Chopra, Advocate for the Revenue.

Versus

M/s.Purolator India Limited .... Respondent
Through: Mr.Amit Sachdeva, Advocate

CORAM:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether reporters of Local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the Digest? No

A.K. SIKRI, J. (ORAL)
*

1. This appeal involves the following questions of law:-

> "(a) Whether on a correct interpretation of the relevant statutory provisions, Tribunal was justified in law in directing the Assessing Officer to allow deduction under section 80HHC of the Act in respect of "profit" on sale of DEPB?
>
> (b)Whether on the facts of the present case, Tribunal was justified in law in impliedly holding that the assessee would be entitled to deduction as per the first proviso below sub-Section 3 of Section

80HHC in respect of DEPB Credit utilized by the assessee?"

2. The order passed by the Tribunal in this appeal is brief because of the reason that the Tribunal has simply followed (which it was supposed to) the decision of the ITAT Special Bench, Mumbai in the case of ***Topman Export*** *Vs.* ***ITO*** [ITA No. 5769/Mum./2006 decided on dated 11th August, 2009.]. By that judgment, the Special Bench of the Tribunal has held that the face value of DEPB is chargeable to tax u/s 28 (iiib) at the time of accrual of income, that is, when the application for DEPB is filed with the competent authority pursuant to exports and profit in sale of DEPB representing the excess of sale proceeds of DEPB over its face value is liable to be considered u/s 28(iiid) at the time of its sale.

3. The Revenue had filed the appeal in the High Court Adjudicate at Bombay against the aforesaid decision of the Special Bench of the ITAT. The Bombay High Court has reversed the decision of the Tribunal and the judgment of the Bombay High Court is reported as ***Commissioner of Income Tax*** *Vs.* ***Kalpataru Colours and Chemicals,*** *328 ITR 451.*

4. Since the Tribunal had simply followed Special Bench decision in ***Topman Exports*** (supra) which stands over ruled, we set aside the

order passed by the Tribunal and remit the case back to the Tribunal to decide this appeals on merits after taking into account factual position in all this case.

5. The appeal stands disposed of on above terms.

A.K. SIKRI, J.

M.L.MEHTA, J.

MARCH 22, 2011
Dev